

Aug 28, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DUSTIN ALVIN ZUHLKE,

Defendant.

No. 4:18-CR-06028-EFS-1

ORDER GRANTING
DEFENDANT'S MOTION TO
REOPEN DETENTION HEARING
AND SETTING CONDITIONS OF
RELEASE

ECF No. 81

BEFORE THE COURT is Defendant's Motion to Reopen Detention Hearing to Consider Conditions of Release (ECF No. 81). The Government opposes the Motion. On August 28, 2018, the Court reopened the detention hearing to consider Defendant's additional proffers and arguments of counsel. 18 U.S.C. § 3142(f). Defendant appeared, in custody, with his attorney Scott Johnson. Assistant United States Attorney Stephanie Van Marter represented the United States.

The Court has considered this additional information and evaluated the four

1 factors outlined in 18 U.S.C. § 3142(g) to decide whether there were conditions of
2 release that would reasonably assure Defendant's appearance in court and the
3 safety of the community: (1) the nature and circumstances of the offense; (2) the
4 weight of evidence against Defendant; (3) the history and characteristics of
5 Defendant; and (4) the nature and seriousness of the danger Defendant would
6 present to the community if released. Due to the nature of the charges, there is a
7 rebuttable presumption of detention.

8 The Court finds that these factors, as set forth orally by the Court, weigh in
9 favor of Defendant's release on conditions.

10 The nature and circumstances of this offense are serious. Defendant is
11 charged with conspiracy to distribute fentanyl pills and substantives counts of
12 distribution of fentanyl. Defendant is alleged to have distributed approximately
13 1,500 fentanyl pills per week. A search warrant was executed at Defendant's home
14 and law enforcement recovered two firearms, \$30,000 in cash, \$90,000 in cash in
15 another location, fentanyl pills, and drug ledgers. Defendant is alleged to have
16 taken three recent trips to Mexico. These charges are serious, as fentanyl is the
17 most dangerous drug available in the community. Fentanyl is incredibly potent
18 and it poses a risk to fentanyl users, people who reside with fentanyl users, and law
19 enforcement officers who come into contact with fentanyl users. It has resulted in
20 more than a dozen overdose deaths in the Tri-Cities area in the last 18 months.

1 However, Defendant's charges do not carry a mandatory minimum, which makes
2 his case different than other fentanyl cases in this district.

3 Defendant has a limited criminal history. Defendant has a 2013 negligent
4 driving conviction, for which work crew was imposed for a series of violations but
5 probation was eventually closed. Defendant completed a deferral in a 2014 theft
6 case, probation was closed in a 2014 hit and run case, and Defendant was
7 convicted of third degree driving while license suspended in 2018. Defendant does
8 have a history of failing to appear for court, including once in 2013 and twice in
9 2018. However, the Court finds that the imposition of an appearance bond along
10 with other conditions can reasonably assure the safety of the community and
11 Defendant's future appearance.

12 IT IS HEREBY ORDERED:

13 1. The Motion to Reopen Detention Hearing (ECF No. 81) is
14 GRANTED.

15 2. If a party desires this Court to reconsider conditions of release
16 because of material and newly discovered circumstances under 18 U.S.C. §
17 3142(f), that party shall file a motion with the court, served upon the United
18 States Attorney, stating what circumstances are new, how they are established,
19 and the requested change in conditions of release.

20 3. If a party seeks review of this Order by another court pursuant to 18

1 U.S.C. § 3145(b), counsel shall adhere to the Detention Order Review Protocol
2 found in L.Cr.R. 46(k).

3 4. Defendant is bound over to Judge Edward F. Shea for further
4 proceedings.

5 5. Defendant shall complete and sign A.O. Form 199C and, upon
6 release, abide by the following conditions at all times:

7 **CONDITIONS OF RELEASE**

8 1. Defendant shall not commit any offense in violation of federal, state
9 or local law. Defendant shall advise the supervising Pretrial Services Officer and
10 defense counsel within one business day of any charge, arrest, or contact with law
11 enforcement. Defendant shall not work for the United States government or any
12 federal or state law enforcement agency, unless Defendant first notifies the
13 supervising Pretrial Services Officer in the captioned matter.

14 2. Defendant shall immediately advise the Court and the United States
15 Attorney in writing before any change in address.

16 3. Defendant shall appear at all proceedings and surrender as directed for
17 service of any sentence imposed.

18 4. Defendant shall sign and complete form A.O. 199C before being
19 released and shall reside at the address furnished.

1 5. Defendant shall not possess a firearm, destructive device or any
2 dangerous weapons.

3 6. Defendant shall report to the U.S. Probation/Pretrial Services office
4 before or immediately after release and shall report as often as they direct, at such
5 times and in such manner as they direct.

6 7. Defendant shall contact defense counsel at least once a week.

7 8. Defendant is further advised it is unlawful for any person who is
8 under indictment for a crime punishable by imprisonment for a term exceeding one
9 year, to possess, ship or transport in interstate or foreign commerce any firearm or
10 ammunition or receive any firearm or ammunition which has been shipped or
11 transported in interstate or foreign commerce.

12 9. Defendant shall refrain from use or unlawful possession of a narcotic
13 drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed
14 by a licensed medical practitioner in conformance with Federal law. Defendant
15 may not use or possess marijuana, regardless of whether Defendant has been
16 authorized medical marijuana under state law.

17 10. Defendant shall surrender any passport to Pretrial Services and shall
18 not apply for a new passport.
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20

1 **SPECIAL CONDITIONS OF RELEASE**

2 1. Defendant shall remain in the Eastern District of Washington unless
3 given permission by the United States Probation/Pretrial Services Office.

4 2. Defendant shall notify the United States Probation/Pretrial Services
5 Office within 24 hours of any change in address, telephone number, or
6 employment.

7 3. Defendant shall avoid all contact, direct or indirect, with any
8 codefendants or any persons who Defendant would reasonably know are or may
9 become a victim or potential witness in the subject investigation or prosecution.

10 4. Defendant shall submit to a substance abuse evaluation and undergo
11 any recommended substance abuse treatment as directed by the United States
12 Probation/Pretrial services office.

13 5. Defendant shall abstain totally from the use of alcohol.

14 6. Defendant shall submit to random urinalysis and/or breathalyzer
15 testing as directed by the United States Probation/Pretrial Services Office.

16 7. Defendant shall refrain from obstructing or attempting to obstruct or
17 tamper, in any fashion, with the efficiency and accuracy of any prohibited
18 substance testing which is required as a condition of release.

19 8. Defendant shall participate in a program of GPS confinement.
20 Defendant shall wear, at all times, a GPS device under the supervision of U.S.

1 Probation. In the event Defendant does not respond to GPS monitoring or
2 cannot be found, the U.S. Probation Office shall forthwith notify the United
3 States Marshals' Service, who shall immediately find, arrest and detain the
4 Defendant. Defendant shall pay all or part of the cost of the program based upon
5 ability to pay as determined by the U.S. Probation Office.

6 9. Defendant shall be restricted to his residence at all times except for:
7 attorney visits; court appearances; case-related matters; court-ordered
8 obligations; or other activities as pre-approved by the Pretrial Services Office or
9 supervising officer, including but not limited to employment, religious services,
10 medical necessities, substance abuse testing or treatment, or mental health
11 treatment.

12 10. Defendant shall execute a \$75,000 appearance bond with 10%
13 down. One of Defendant's parents shall co-sign the bond.

14 11. Defendant shall be released from custody at 8 a.m. the following
15 business day after the percentage bond is posted for installation of location
16 monitoring.

17 DATED August 28, 2018.

18 *s/Mary K. Dimke*
19 MARY K. DIMKE
20 UNITED STATES MAGISTRATE JUDGE